From: Devin Carraway
To: Microsoft ATR
Date: 1/23/02 1:24pm
Subject: Microsoft Settlement

Pursuant to the Tunney Act, I wish to comment on the proposed Microsoft antitrust settlement. I make these comments as a software engineer with 17 experience in the field, having developed software for many applications, including Microsoft's Windows, Apple's Macintosh OS, Linux and other flavors of UNIX. These comments relate to the Proposed Final Judgement (http://www.usdoj.gov/atr/cases/ms-settle.htm) in US v Microsoft.

I urge rejection and abandonment of the proposed final judgement, as an ineffective instrument which will have make no perceptible improvement to the state of competition in the relevant computer software industries, while potentially leaving Microsoft in a position of still greater power than without the settlement. I further suggest that at the behest of the current presidential administration, the prosecution in this case is being made (directly or indirectly) to deliberately scuttle a successful case brought against this monopolist.

This settlement is almost perverse in its empowerment of the convicted party to dictate the details of its own "punishment." Microsoft will be left in a stronger position as a consequence of this, free in most cases to selectively exempt itself from enforcement the prohibitions levied by the judgement.

The settlement does not even adequately address in its particulars the relevant list of operating systems in existence today -- for example, exempting the most popular Microsoft operating systems, the Windows 95, 98 and ME series, from the definition of "Windows Operating System Product." It also excludes likely future avenues of exploitation in other sectors of the computer industry, most notably the mobile and embedded computing sectors, by ignoring all MS products in these areas, and consequently exempting them from defense, even in this settlement's inadequate and ineffectual fashion, from Microsoft monopoly practices, both within and without.

The settlement poses a particular threat by leaving Microsoft in a stronger position than ever with respect to some of its most serious potential long-term competition, that of the Open Source movement and its products. This movement frequently arises from academic and hobbyist circles; I find it highly improbable that Microsoft would willingly acknowledge these independent engineers when exercising "its sole judgement" of fitness to receive API information as dictated by the proposed jugement. Microsoft has also in the past used cooperation with the Open Source movement as justification to discriminate against ISVs and OEMs, and would be free to continue to do so.

The settlement ignores completely Microsoft's application file formats, e.g. those used by the Microsoft Office productivity suite, despite Microsoft's historical use of these formats to advance its monopoly position.

Finally, and more generally, this settlement relies upon historical ignorance of Microsoft's practices -- the antitrust case arose in part through their violation of the 1994 consent decree regarding these practices. Microsoft has displayed utter contempt and disregard for restriction of its behavior by the courts or the US Dept. of Justice, conduct agreements or not, and will in my estimation continue to do so under this settlement, under the shield of immunity afforded them by this agreement. It is profoundly illogical to award a convicted monopolist a settlement which amounts in all significant effects to a total capitulation of the prosecution's case.

Thank you for your attention.

Devin Carraway
Software Engineer
Berkeley, California